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Calendar No. 5.

67TH CONGRESS, }
1st Session. }

SENATE.

{ REPORT
No. 2.

PEACE WITH GERMANY.

APRIL 25, 1921.—Ordered to be printed.

Mr. LODGE, from the Committee on Foreign Relations, submitted the following

REPORT.

[To accompany S. J. Res. 16.]

The Committee on Foreign Relations, to whom was referred Senate joint resolution 16, repealing the joint resolution of April 6, 1917, declaring a state of war to exist between the United States and Germany, and for other purposes, having had the same under consideration, report it with the recommendation that it do pass with the following amendment in the nature of a substitute redrafted by Mr. Knox.

Strike out all after the resolving clause and substitute the following:

That the joint resolution of Congress passed April 6, 1917, declaring a state of war to exist between the Imperial German Government and the Government and people of the United States of America, and making provisions to prosecute the same, be, and the same is hereby, repealed, and said state of war is hereby declared at an end.

That all property of the Imperial German Government, or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession or under control of the Government of the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by Congress, until such time as the German Government has, by treaty with the United States of America, ratification whereof is to be made by and with the advice and consent of the Senate, made suitable provisions for the satisfaction of all claims against the German Government of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of German Government or its agents since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise, and also provisions granting to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce, and industrial property rights, and confirming to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the German Government or German nationals, and waiving any and all pecuniary claims based on events which occurred at any time before the coming into force of such treaty, any existing treaty between the United States of America and Germany to the contrary notwithstanding.

That until by treaty or act or joint resolution of Congress it shall be determined otherwise, the United States of America, although it has not ratified the treaty of Versailles, reserves for itself and its nationals all of the rights, powers, claims, privileges, indemnities, reparations, or advantages to which it and its nationals are or may become entitled, together with the right to enforce the same, under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof or otherwise, or which under the treaty of Versailles have been stipulated for its benefit, or for the benefit of its nationals, with the same force and effect as if said treaty of Versailles had been ratified by the United States of America, and to which the United States of America is or may become entitled as one of the principal allied and associated powers.

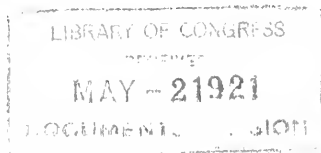
That the joint resolution of Congress approved December 7, 1917, declaring that "a state of war exists between the Imperial and Royal Austro-Hungarian Government and the Government and the people of the United States of America and making provisions to prosecute the same," be, and the same is hereby, repeated, and said state of war is hereby declared at an end.

That all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all nationals of the Austrian Empire or the Kingdom of Hungary which was, on April 6, 1917, in or has since that date come into the possession or under the control of the Government of the United States of America or of any of its officers, agents, or employees from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by Congress, until such time as the Austrian Government has by treaty with the United States of America, ratification whereof is to be made by and with the advice and consent of the Senate, made suitable provisions for the satisfaction of all claims against the Austrian Government of all persons, where-soever domiciled, who owe permanent allegiance to the United States of America, and who have suffered through the acts of the Austrian Government or its agents since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in Austrian, American, or other corporations, or in consequence of hostilities or of any operations of war or otherwise, and also provisions granting to persons owing permanent allegiance to the United States of America most favored nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce, and industrial property rights, and confirming to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Austrian Government or nationals of the Austrian Empire, and waiving any and all pecuniary claims based on events which occurred at any time before the coming into force of such treaty, any existing treaty between the United States of America and Austria to the contrary notwithstanding.

That until by treaty or Act or joint resolution of Congress it shall be determined otherwise, the United States of America, although it has not ratified the treaty of Saint Germain or the treaty of Trianon, reserves for itself and its nationals all of the rights, powers, claims, privileges, indemnities, reparations, or advantages to which it and its nationals are or may become entitled, together with the right to enforce the same under the terms of the armistice signed November 3, 1918, or any extensions or modifications thereof, or otherwise, or which under the treaty of Saint Germain or the treaty of Trianon have been stipulated for its benefits or for the benefit of its nationals with the same force and effect as if said treaty of Saint Germain and the treaty of Trianon had been ratified by the United States of America, and to which the United States of America is or may become entitled as one of the principal allied and associated powers.

Amend the title so as to read as follows:

"Repealing the joint resolution of April 6, 1917, declaring a state of war to exist between the United States and Germany, and the joint resolution of December 7, 1917, declaring a state of war to exist between the United States and the Imperial and Royal Austro-Hungarian Government, and for other purposes."



Calendar No. 5.

67TH CONGRESS, }
1st Session. }

SENATE.

} REPT. 2,
} Part 2.

PEACE WITH GERMANY.

APRIL 28 (calendar day, APRIL 29), 1921.—Ordered to be printed.

MR. POMERENE, from the Committee on Foreign Relations, submitted the following

VIEWS OF THE MINORITY.

[To accompany S. J. Res. 16.]

It is with the deepest regret that we find ourselves unable to agree with the majority.

We concur whole-heartedly in the desire of the country for peace at the earliest practicable moment, and we shall be glad to join with the majority in any measure looking to that end, provided it is formed along lines which are sound both from a domestic and an international viewpoint.

Our belief is that the method provided in the pending resolution will prove a disappointment to its friends and is fraught with untold difficulties.

Broadly speaking, the resolution is composed of three parts:

First. It repeals the joint resolutions declaring a state of war to exist between the United States and the Imperial German Government and the United States and the Imperial and Royal Austro-Hungarian Government, and it recites the "said state of war is hereby declared at an end."

Second. The pending resolution provides also that all property of these enemy Governments or their successors and their nationals now in the possession or under the control of the United States or its representatives shall be retained by the United States and no disposition thereof made except by special act of Congress—

(a) Until such time as these Governments, by treaty with the United States duly ratified, shall make suitable provision for the satisfaction of all claims of all persons owing permanent allegiance to the United States who have suffered directly or indirectly through the enemy Governments or their agents since the several declarations of war.

(b) And until provisions shall be made by treaty granting to all persons owing permanent allegiance to the United States most-favored-nation treatment in all matters affecting residence, business,

profession, trade, navigation, commerce, and industrial property rights.

(c) And until they shall confirm to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America.

(d) Until they shall waive any and all pecuniary claims based on events which occurred at any time before the coming into force of such treaty, any existing treaty between the United States of America and Germany to the contrary notwithstanding.

Third. The resolution purports to reserve to the United States and its nationals all the rights, powers, claims, privileges, indemnities, reparations, or advantages to which it or its nationals are or may become entitled by the treaty of Versailles, although it has not been ratified by the United States, under the several armistices, or their extensions, or modifications, or which under the treaty of Versailles have been stipulated for its benefit or the benefit of its nationals with the same force and effect as if the said treaty of Versailles had been ratified by the United States.

We submit that this is an attempt by act of Congress to usurp the treaty-making power of the President and the Senate. A similar resolution was passed by the Congress and vetoed by the President during the last session of the Sixty-sixth Congress. The excuse given for its enactment at that time was the failure of the President and the Senate to agree as to the terms of the ratification of the Versailles treaty. That same excuse does not exist now. The President and the majority of the Senate are in party accord.

This is the first attempt in the history of our country to circumvent the treaty-making power.

Congress is given the power to declare war, to raise and support armies, to provide and maintain a navy, to make rules for the government and regulation of land and naval forces, to call out the militia, and to provide for the organizing and disciplining of the militia, and to make all laws necessary and proper to carry into execution the foregoing powers.

The President is the Commander in Chief of the Army and the Navy. Under the Articles of Confederation the Congress was given "the sole and exclusive right and power of determining on peace and war." Not so under the Constitution. Nowhere does it vest the peace-making power in the Congress, and we think it was purposely omitted by the constitutional fathers. An examination of the debates in the Constitutional Convention shows that in the early draft of the Constitution Congress was given the power "to make war." During the discussion it was said that the power to "make war" included the power to "wage war," and it was thought unwise to place the power to wage war in a body so numerous as the Congress, and so the convention substituted the words "declare war" for the words "make war." Later one of the delegates, Mr. Butler, rose and moved to add the words "and peace" after the word "war," so that the provision would read "to declare war and peace." If the Constitution had so read, then there could be no question about the power of Congress to declare peace, but, strange to say, this amendment was unanimously defeated, and the power conferred upon the Congress was simply to "declare war."

We do not mean to say that because the words "and peace" were not added after the words "to declare war" it necessarily deprives the Congress of the power to declare peace if the Constitution either expressly or impliedly otherwise provided, but we do claim that it is strong evidence it was intended not to confer this power on the Congress.

The power is conferred upon the President "by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present agree." This power is all-comprehensive. There are no limitations upon it or exceptions to it. It is the usual way by which peace and commerce treaties or conventions with other powers are made, and there is no sound reason why this method should not be pursued now.

In order that we may ascertain the exact legal effect of this resolution let us examine the phrasing of the German war resolution. It does not declare war against Germany. It reads: "The state of war * * * is hereby formally declared." In other words, there was war between the United States and the Imperial German Government before it was passed. Congress only declared the state of war to exist. When we repeal this resolution Congress does not thereby end the war, if war exists, it only repeals the statement or declaration that there was a state of war. And when the pending resolution recites "the state of war is hereby declared to be at an end," if the war is not at an end, the resolution does not end it. If it is at an end, then the declaration by the Congress to that effect adds nothing to the state of peace, except in a very technical, legal sense.

But the repeal of these resolutions will affect our commerce. During the war commerce with Germany and Austro-Hungary was suspended.

On July 14, 1919, the War Trade Board Section of the State Department issued a license permitting communication and trade with "persons residing in Germany" subject, however, to the following special limitations and exceptions, to wit:

(1) The above-mentioned general license does not authorize the importation into the United States from Germany or elsewhere of dyes, dyestuffs, potash, drugs, or chemicals which have been produced or manufactured in Germany.

(2) The above-mentioned general license does not modify or affect in any respect present restrictions against trade and communication between the United States and Hungary or that portion of Russia under the control of the bolshevik authorities.

(3) The above-mentioned general license does not authorize trade with respect to any property which heretofore, pursuant to the provisions of the trading with the enemy act as amended, has been reported to the Alien Property Custodian or should have been so reported to him, or any property which heretofore, pursuant to the provisions of said act, the Alien Property Custodian has seized or has required to be conveyed, transferred, assigned, delivered, or paid over to him.

Exports to and imports from Germany may take place under Special Export License RAC No. 77, and General Import License PBF No. 37, as announced in W. T. B. R. 803 and W. T. B. R. 804, respectively.

These restrictions have since been modified so far as they relate to the importation of potash from Germany, and so far as they relate to trading with Hungary and Russia.

EFFECT OF REPEAL OF WAR RESOLUTION.

We seized property in this country and on the high seas belonging to the German Government and her nationals, including German

ships which had sought refuge in our ports from the allied fleets. Our authority to do this was by virtue of this declaration of war and subsequent legislation. The seizures were made by our military, naval, and civilian forces.

Germany likewise took possession of property of the United States and its nationals then in its territory. Its Navy seized our property on the high seas. Such property as it did not destroy it still has in its possession and control. By the passage of the pending resolution we are repealing the very resolutions which were the authority for our acts and under which we took possession of this property, and we are doing it without any consideration moving to us therefor.

True, the resolutions recite that we are going to keep the property we thus seized, except such as may be released by act of Congress, until a treaty shall be ratified which shall provide for the disposition of this property and the settlement of all claims which our Government or our nationals may have against the German Government growing out of this war. And then, as if to add emphasis, the resolution declares that we reserve "all the rights, powers, claims, privileges, indemnities, reparations, or advantages provided for in the Versailles treaty to which we would be entitled if we had ratified it."

While considering the effect of the passing of the pending resolution, let us keep in mind that our treaty of 1799 with Prussia, which was revived by the treaty of 1828, expressly provides in article 23:

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall: but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

And this last treaty significantly and formally declares it to be "equally beneficial to both countries" and "applicable in time of peace as well as in time of war."

We submit that the enactment of the pending resolution will result:

(1) In removing unconditionally all war restrictions with respect to our trade with Germany and Austria-Hungary, and will restore all commerce as heretofore. Of course, this is an end to be desired by Americans as well as Germans, but it will prove of infinitely more importance to Germany to get into our markets than it will for America to get into German markets. In our judgment, while we desire commercial relations, we should first determine the terms and conditions upon which we shall renew them before we let down the bars unconditionally. We owe this duty to the American people.

(2) In consideration for this unconditional repeal of the war resolutions we receive no compensating return. True, the resolution recites that we shall retain the property already seized by our forces, including ships in our ports, until all claims of indemnity by our Government or our nationals are settled by treaty, to the same extent that we could if we had ratified the Versailles treaty. But we assert that these reservations add nothing to our title or to our

security. They do nothing more than serve notice upon the German Government as to what our position will be with respect to this property. Let it be borne in mind that the Versailles treaty is only binding upon those powers which have exchanged ratification, and unless we do ratify that treaty, Germany is not bound thereby to satisfy the claims of our Government or our nationals.

(3) The repeal of the war resolution will only serve to strengthen Germany's claim that the seizure by our forces of the property of Germany and of German nationals, including the ships in our ports, was unlawful and in violation of our treaties of 1799 and 1828 with Prussia, to which reference has been made.

(4) By the repeal of the resolution we leave Germany in possession of all the property belonging to the United States or to our nationals which was seized and confiscated by it on German territory or upon the high seas, without any obligation on its part to give compensation therefor.

(5) We can not by this legislation either persuade or compel Germany to reciprocate by similar legislation, and the only way known to the law to settle these questions between Germany and ourselves is either by treaty negotiations or by force of arms.

(6) Germany has shown no disposition to make settlement with any of our allies, or with ourselves, on an equitable basis for the damages it has wrought. Why, then, should we voluntarily repeal this resolution—the thing Germany desires above everything else—and leave all other matters to be hereafter adjusted according to Germany's own sweet will? Now the United States Government has the advantage. The majority, as evidenced by their report, if this legislation is passed, will voluntarily surrender it and give it to Germany.

(7) We conclude, therefore, that if the administration is not willing to ratify the Versailles treaty with such reservations and upon such terms and conditions as will secure to the United States and its nationals all of the rights and privileges which are provided for them under the Versailles treaty, then we suggest that before this resolution is passed we request the President, through the State Department, to enter into communication with the German Government, and negotiate a treaty by which it will agree to adjust all differences fairly to it, ourselves, and our associates and allies, along the lines set out in the pending resolution. If Germany will not enter into a treaty along these lines while the resolution declaring a state of war is in effect, it will not do so when the resolution is repealed. If Germany does enter into such a treaty, we believe it will do so more expeditiously with this war resolution on our statute books than if it is repealed. Nothing can be lost by this course. Much can be gained. In any event we will have the advantage thereby in our negotiations.

These same observations in substance apply to the repeal of the resolution declaring a state of war with the Imperial and Royal Austro-Hungarian Government.

G. M. HITCHCOCK.
JOHN SHARP WILLIAMS.
CLAUDE A. SWANSON.
ATLEE POMERENE.

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